

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CR 02-1592 JP

BRIAN MADDOX,

Defendant.

MEMORANDUM OPINION AND ORDER

Before this Court are a number of documents that were forwarded to this Court from the United States District Court for the Southern District of Indiana for filing in this proceeding and docketed in this Court as Doc. Nos. 95, 96, 97, 98, 99 and 100. The documents were originally filed in a habeas corpus proceeding in *Brian Maddox v. Helen Marberry, Warden, USP Terre Haute*, No. 2:10-cv-0108 LJM-JMS in the United States District Court for the Southern District of Indiana, Terre Haute Division. This Court accepts and construes the documents as transferring jurisdiction to the District of New Mexico. On consideration of the issues presented in the transferred documents, this Court will appoint counsel for Defendant, require submission of briefs, and set a hearing.

Defendant was convicted and sentenced in this criminal proceeding in the District of New Mexico and is confined in a federal facility within the boundaries of the Southern District of Indiana. Defendant failed three times to obtain post-judgment relief, under both 28 U.S.C. § 2255 and *audita querela*, from this Court and the Court of Appeals for the Tenth Circuit. Defendant then filed a Petition For Writ Of Habeas Corpus in the United States District Court for the Southern District of Indiana (Doc. No. 95 in NM). The United States District Court for the Southern District of Indiana denied his petition. Defendant appealed to the Court of Appeals for the Seventh Circuit which reversed the denial and remanded the matter “for swift reconsideration in light of *Welch v. United States*, 604 F.3d 40[8] (7th Cir. 2010), and . . . the Response filed [by the government] on October 21, 2010.” *Maddox v. Marberry*, No. 10-2818, slip order (7th Cir. Nov. 8, 2010). On remand, the United States District Court for the Southern District of Indiana entered an Entry Granting Writ of Habeas

Corpus and a Judgment granting Defendant's petition (Doc. Nos. 96 and 97 in NM), purporting to vacate the sentence that this Court had imposed on Defendant, and forwarding documents to this Court for filing in this criminal proceeding.

Defendant's central assertion is that the decision in *Chambers v. United States*, 129 S. Ct. 687 (2009), rendered his sentence illegal. The Court notes that the Courts of Appeal for the Tenth and the Seventh Circuits do not necessarily agree on the applicability or effect of *Chambers* on Defendant's second or successive attempts to vacate or correct his sentence. *Compare In re: Brian Maddox*, No. 10-2040 (10th Cir. June 11, 2010), with *Welch v. United States*, 604 F.3d 408 (7th Cir. 2010); and see *United States v. Chacon*, No. 10-2095, slip order (10th Cir. Nov. 30, 2010) (discussing successive § 2255 motions and *audita querela*). To assist the Court in effecting an appropriate resolution, counsel will be appointed for Defendant, briefs ordered, and a hearing set on the status of Defendant's sentence and possible resentencing. The government's brief should address, inter alia, the position taken by the Office of the United States Attorney for the Southern District of Indiana in its Local Rule 16.2 Statement (Doc. No. 100 in NM) filed in the District Court for the Southern District of Indiana proceeding.

IT IS THEREFORE ORDERED that counsel be appointed for Defendant;

IT IS FURTHER ORDERED that, no later than December 20, 2010, the parties are directed to file briefs on the issues raised by the documents transferred to this Court by the United States District Court for the Southern District of Indiana; and

IT IS FURTHER ORDERED that a hearing is set at 2:00 p.m, January 6, 2011, Mimbres Courtroom, Fourth Floor, Pete V. Domenici United States Courthouse, 333 Lomas Blvd. N.W., Albuquerque, New Mexico, on the status of Defendant's sentence and possible resentencing by this Court.



SENIOR UNITED STATES DISTRICT JUDGE